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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Revision of the Commission's)	CC Docket No. 94-102
Rules to Ensure Compatibility)	RM-8143
with Enhanced 911 Emergency)	
Calling Systems)	

COMMENTS OF AT&T WIRELESS SERVICES, INC.

AT&T Wireless Services, Inc. ("AT&T"), by its attorneys, hereby submits its comments in support of the petition for reconsideration filed by the Cellular Telecommunications Industry Association ("CTIA") in the above-captioned proceeding.^{1/} In light of the Commission's decision to require CMRS carriers covered by the Commission's E-911 rules to complete all 911 calls from subscribers and non-subscribers alike,^{2/} CTIA asks the Commission to reconsider and clarify its related rules and policies. AT&T agrees that the Commission should clarify that CMRS carriers may choose the E-911 technology that best allows them to meet the Commission's requirements, clarify that public safety answering points ("PSAPs") may not require carriers to recover the costs of implementing E-911 solely through charges to their CMRS customers, and reconsider its refusal to afford CMRS carriers uniform limitations on liability.^{3/}

^{1/} Petition for Reconsideration and Clarification of the Cellular Telecommunications Industry Association, filed February 17, 1998 ("CTIA Petition").

^{2/} Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, RM-8143, Memorandum Opinion and Order, FCC 97-402 at ¶ 32 (rel. Dec. 23, 1997) ("E-911 Memorandum Opinion and Order").

^{3/} AT&T does not comment on the other issues raised in the CTIA petition.

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I. THE COMMISSION SHOULD CLARIFY THAT CMRS CARRIERS MAY CHOOSE THE E-911 TECHNOLOGY THAT BEST ALLOWS THEM TO MEET THE COMMISSION'S REQUIREMENTS

AT&T supports CTIA's request that the Commission clarify that it is the responsibility of CMRS carriers, not PSAPs, to select the means by which a caller's automatic number identification ("ANI") and location information is transmitted to the appropriate PSAP.^{4/} In the E-911 Report and Order, the Commission indicated that CMRS providers would be responsible for developing and implementing "state-of-the-art" communications technologies for wireless 911 service.^{5/} The Commission chose to adopt general performance criteria rather than extensive technical standards to guide the development of wireless 911 service, recognizing that an inflexible approach might discourage carriers from developing "creative technological approaches to E-911 deployment."^{6/} Consistent with this finding, and to promote the development and implementation of wireless E-911 systems, the Commission should clarify that CMRS carriers may choose the technology that best allows them to meet the Commission's requirements and that PSAPs may not dictate technology choices to carriers.

The Commission has asked CMRS carriers to "upgrade and improve 911 service to increase its accuracy, availability, and reliability."^{7/} As the Commission recognized, certain implementation issues such as switching and signaling standards will require coordination

^{4/} Petition at 18.

^{5/} Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, RM-8143, Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 18676 at ¶¶ 14, 143 (1996) ("E-911 Report and Order").

^{6/} Id. at ¶ 76.

^{7/} Id. at ¶ 14.

between CMRS carriers, PSAPs, and wireline local exchange carriers. It is clear, however, that the choice of what technology to use to improve 911 service for CMRS customers must be left to CMRS carriers. If individual PSAPs can force CMRS providers to conform to the PSAP's technology choice, the result will be the "balkanization" of wireless 911 systems, rather than the development of seamless national systems that the Commission has envisioned.

In this regard, AT&T has contracted for a nationwide system to meet the Commission's requirements for providing Phase I E-911. In selecting its national solution, AT&T focused on the priorities of the PSAP community, which were expressed both in comments to the Commission during the rulemaking process and in more informal communications. Based upon these statements, AT&T understood the PSAP community's priorities to be compatibility (*i.e.*, Phase I solutions that fully comply with all applicable standards, are compatible with existing PSAP equipment, and require no upgrade of PSAP systems) and long-term operability. In addition, PSAPs generally have asked for Phase I solutions that can provide a platform for eventual Phase II implementation and will not require wholesale replacement in order to meet Phase II requirements. The nationwide solution AT&T has selected will satisfy these criteria.

The Report and Order imposes the obligation on CMRS carriers to develop and implement technology that will allow them to meet the Commission's performance criteria for wireless E-911. Implicit in this requirement is the ability of each carrier to choose the technology that best enables it to fulfill its E-911 obligations. To prevent disputes between the parties and promote the rapid development and implementation of wireless E-911 systems, the Commission should make clear that carriers can make this choice.

II. THE COMMISSION SHOULD CLARIFY THAT PSAPS MAY NOT REQUIRE CARRIERS TO RECOVER THE COSTS OF IMPLEMENTING E-911 SOLELY THROUGH CHARGES TO THEIR CMRS CUSTOMERS

AT&T supports CTIA's request that the Commission clarify that PSAPs may not limit CMRS carriers to recovering the costs of implementing E-911 solely through direct charges to their CMRS customers.^{8/} In the E-911 Memorandum Opinion and Order, the Commission reaffirmed its earlier decision not to establish a federal cost recovery mechanism and stated that it had no adequate basis for concluding that state and local cost recovery mechanisms will be discriminatory or inadequate.^{9/} While AT&T does not challenge that conclusion, it asks the Commission to make clear that a state or local cost recovery mechanism would be inadequate if it required CMRS carriers to recover their costs solely from their CMRS customers.

Some in the PSAP community have argued that a state may satisfy its obligation to adopt a cost recovery mechanism by "permitting" carriers to increase their rates to recover E-911 costs.^{10/} States, however, have no authority to dictate whether CMRS providers may or may not raise their rates.^{11/} The Commission was obviously aware of the absence of state rate authority when it promulgated its E-911 rules, and therefore could not have intended for such a maneuver to satisfy its explicit requirement that "a mechanism for the recovery of costs relating to the

^{8/} Petition at 17.

^{9/} E-911 Memorandum Opinion and Order at ¶ 145.

^{10/} See Edward Warner, Only Limited E911 Compliance Expected, Wireless Week, Feb. 23, 1998 at 40 (describing NENA's view that cost recovery exists if a state "allows" a carrier to increase its rates to recover 911 costs).

^{11/} 47 U.S.C. § 332(c)(3) ("Notwithstanding sections 2(b) and 221(b), no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service").

provision of [E-911] services be in place” before a covered carrier is obligated to satisfy the Phase I and Phase II requirements.^{12/}

One party has argued that carriers should be required to implement Phase I as long as they are reimbursed for the costs of dedicated 911 trunking, one of the smallest cost components of providing Phase I service.^{13/} By default, carriers would be forced to recover the majority of Phase I costs via surcharges on customer bills.^{14/} Some PSAPs suggest, erroneously, that carriers could control these costs by deploying only those E-911 services that customers “want and will support.”^{15/} In fact, the nature of wireless carriers’ E-911 obligations has already been established by the Commission and those obligations are triggered by requests from the PSAPs themselves. Carrier-specific surcharges, moreover, may vary from carrier to carrier, creating marketplace disparities and undermining competitive neutrality. These adverse effects are magnified if only wireless carriers must recover E-911 costs through customer surcharges, while other carriers do not. As the Commission recognized when it required CMRS carriers to forward all 911 calls regardless of subscription, implementing wireless E-911 will have broad public benefits.^{16/} It is therefore appropriate for a government entity to direct the broad-based recovery of the costs of wireless E-911.

^{12/} E-911 Report and Order at ¶ 11.

^{13/} See S. Robert Miller, The Great Debate . . . Who Should Pay for Wireless Enhanced 911?, NENA News, March 1998, at 10.

^{14/} Id. at 12 (“The simple answer is for carriers to take advantage of their deregulated status and simply decide when and what Phase II technology they want, charge their customers an amount they believe is appropriate, and provide location to the PSAPs.”)

^{15/} Id. at 14.

^{16/} E-911 Memorandum Opinion and Order at ¶ 33.

III. THE COMMISSION SHOULD RECONSIDER ITS DECISION NOT TO GRANT CMRS SUBSCRIBERS UNIFORM LIMITATIONS ON LIABILITY

The Commission should reconsider its decision in the E-911 First Report and Order not to exempt providers of E-911 service from liability for certain negligent acts.^{17/} The Commission originally reasoned that it was not necessary to grant CMRS carriers the same broad immunity from liability that is generally available to landline local exchange carriers because CMRS carriers “can afford themselves similar protection by including similar provisions in contracts with their customers.”^{18/} When the Commission subsequently required covered carriers to transmit all 911 calls regardless of subscription, however, it recognized that carriers would not be able to contractually insulate themselves from liability when non-subscribers use their systems.^{19/} Nevertheless, the Commission declined to grant carriers any uniform limitations on liability, reasoning that a carrier could somehow “attempt to make the use of its network by a non-subscriber subject to the carrier’s terms and conditions for liability.”^{20/}

The fact remains, however, that a carrier may have difficulty arguing that a non-subscriber is in contractual privity with the carrier under state law. Now that CTIA has squarely placed the issue of carrier liability before the Commission,^{21/} AT&T reiterates its request for a rule shielding carriers from liability until the states have resolved this issue.^{22/} Such a rule would

^{17/} E-911 Report and Order at ¶ 99.

^{18/} Id.

^{19/} E-911 Memorandum Opinion and Order at ¶¶ 33, 140.

^{20/} Id. at ¶ 140.

^{21/} Petition at 10.

^{22/} See Additional Comments Regarding Wireless Enhanced 911 Services, filed by AT&T (continued on next page)

provide wireless carriers with a minimum level of protection that the industry needs in order to provide E-911 services to consumers.

CONCLUSION

For the reasons set forth above, the Commission should clarify that CMRS carriers may choose the E-911 technology that best allows them to meet the Commission's requirements, clarify that PSAPs may not require CMRS carriers to recover the costs of implementing E-911 solely through charges to their CMRS customers, and reconsider its decision not to grant CMRS carriers uniform limitations on liability.

Respectfully submitted,

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March 18, 1998

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Wireless Services, Inc. on October 17, 1997. In the E-911 Memorandum Opinion and Order, the Commission declined to adopt AT&T's proposal because it was raised late in the proceeding and no other parties responded to the proposal. E-911 Memorandum Opinion and Order at ¶ 141.

CERTIFICATE OF SERVICE

I, Michelle Mundt, hereby certify that on the 18th day of March 1998, I caused copies of the foregoing "Comments of AT & T Wireless Services, Inc." to be sent by hand delivery to the following:

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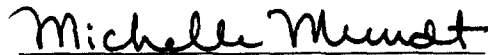
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